INNKEEPER—NO IMPLIED WARRANTY OF QUALITY OF FOOD.—Plaintiff was made sick as a result of eating unwholesome food at defendant's restaurant. She brought an action, alleging that there was a *sale* of the food to her, and a breach of an implied warranty of quality. *Held,* that a restaurant keeper does not "sell" his food. *Merrill* v. *Hodson,* (Conn. 1914) 91 Atl. 533.

The action was brought under the SALE OF GOODS ACT of Connecticut, which provides that in all sales of goods there is an implied warranty that the goods shall be fit for the purpose for which they are ordered. Was there a sale of the food to the plaintiff? PRENTICE, C. J., said: "The customer does not become the owner of the food set before him, * * * No designated portion becomes his. He is privileged to eat and that is all. The uneaten food is not his. He cannot do what he pleases with it. * * * Before the consumption title does not pass, after consumption there remains nothing to become the subject of title. What the customer pays for is the right to satisfy his appetite by the process of destruction," citing *Saunderson* v. *Rowles,* 4 Burrows 2064; *Crisp* v. *Pratt,* 3 Cro. Car. 549; *Parker* v. *Flint,* 12 Mod. 254; *Newton* v. *Trigg,* 3 Mod. 327; and *Harmon* v. *Clarkson,* 22 Upp. Can. C. P. 291, all of which hold that an innkeeper is not a trader subject to bankruptcy, as he does not *sell* the food supplied to his guests, but merely alters it. In many modern cases it has been held that the supplying of liquor, by restaurant keepers, and boarding house keepers, to their guests or boarders, as a part of their meals, is a *sale* of liquor to such persons. *State* v. *Lotti,* 72 Vt. 115; *Savage* v. *State,* 50 Tex. Crim. Rep. 199; *State* v. *Wenzel,* 72 N. H. 396; *Scanlon* v. *Denver,* 38 Colo. 40; *Nicrosi* v. *State,* 52 Ala. 336; *Laner* v. *District of Columbia,* 11 App. D. C. 453. Reasoning from analogy, it would seem that if the title to, or property in the liquor passed to the guest or boarder, the food, which is served under the same circumstances, and for the same purposes would become the property of the guest or boarder, and there would be a complete sale. But in cases tried under liquor laws, the courts very often disregard the technical meaning of the word "sale" and choose to carry out the presumed intention of the legislature, by sustaining convictions on evidence of any transfer of the prohibited commodity for value. They have gone so far as to include barters, exchanges, gifts, and the payment of hire or wages in liquor as sales. *Commonwealth* v. *Abrams,* 150 Mass. 393; *Commonwealth* v. *Clark,* 14 Gray 367; *Mason* v. *Lothrop,* 7 Gray 354; *Bescher* v. *State,* 32 Ind. 480; *Paschal* v. *State,* 84 Ga. 326; BLACK, INTOXICATING LIQUORS, § 403; and *Laner* v. *Dist. of Columbia,* supra.

PRINICIPAL AND AGENT—RIGHT OF ACTION BY UNDISCLOSED PRINCIPAL.—A buyer of asphalt blocks, as agent for the plaintiff, though he did not disclose his agency, made no representation to the defendant that he was dealing with it as principal. In an action by the principal for the breach of an implied warranty the defendant pleaded that the identity of the principal was concealed because of the principal's belief that if it were disclosed the sale would not be made. It appears that the plaintiff and defendant were competitors. The defendant further pleaded, that if it had known the plain-

tiff was principal, it would have refused to make the sale. *Held,* not a defense to an action by principal for breach of an implied warranty. *Kelly Asphalt Block Co.* v. *Barber Asphalt Paving Co.,* (N. Y. 1914) 105 N. E. 88.

Where the agent, as ostensible principal, makes a contract, not under seal, in his own name, the real principal may sue thereon. *Winchester* v. *Howard,* 97 Mass. 303; *Darling* v. *Noyes,* 32 Iowa 96; *Henderson, Hull & Co.* v. *McNally,* 168 N. Y. 646. There are certain exceptions to this rule, however; (first) where exclusive credit is given to the agent, *Cowan* v. *Curran,* 216 Ill. 598; *Kelly* v. *Thuey,* 102 Mo. 522; but the making of an ordinary business contract, without in some way indicating that the personality of the other party is regarded as material, implies consent that it may be enforced by a third person, if it was made in his behalf, *Hawkins* v. *Windhorst,* 87 Kans. 176, 123 Pac. 761; (secondly) where there is an executory contract, the third party, on discovering who the real principal is, may repudiate the contract, and does not have to submit his reasons to the court for so doing, this on the grounds of the established rule in contracts, that a party has a right to select and determine with whom he will contract, and cannot have another thrust upon him without his consent, *Boston Ice Co.* v. *Potter,* 123 Mass. 28; *Winchester* v. *Howard,* 97 Mass. 303; *Arkansas Smelting Co.* v. *Belden Co.,* 127 U. S. 379. The defendant in the principal case set this up as a defense to a contract which had been fully executed but no cases can be found in support of its theory, except where the contract was vitiated on account of the fraud of the agent.

SALES—TENDER OF DELIVERY.—Plaintiff contracted to sell defendant 25 tons aluminum to be delivered f. o. b. New York, "shipment as specified by the buyers between October, 1910, and April, 1911." Defendant accepted 13 tons but did not call for further deliveries nor request further shipments. Plaintiff, without tendering further deliveries, brought suit, alleging only readiness and willingness to perform. *Held,* that plaintiff was bound to tender delivery as a condition precedent to his right to recover for breach of contract. *British Aluminium Co.* v. *Trefts* (1914), 148 N. Y. Supp. 144.

Where there are no conditions precedent to be performed by the vendee, and the acts are concurrent, the vendor cannot recover for breach without first tendering delivery, unless tender has been waived by agreement. *Lester* v. *Jewett,* 11 N. Y. 453; *Gross* v. *Ajello,* 116 N. Y. Supp. 380; *Hapgood* v. *Shaw,* 105 Mass. 276; *Blackman* v. *Hoey,* 18 La. Ann. 23; *Dryden* v. *Lewis,* 5 Dana (Ky.) 138. The cases cited by the court in support of its decision *Lester* v. *Jewett, supra; Delaware Trust Co.* v. *Calm,* 195 N. Y. 231; *Gross* v. *Ajello, supra; Hendrickson* v. *Callam,* 131 N. Y. Supp. 839; and *Pease Oil Co.* v. *Munroe Co. Oil Co.,* 138 N. Y. Supp. 177, were all such cases. But in the present case there was something to be done by the vendee, namely, giving shipping instructions, which was a condition precedent. *Bell* v. *Hatfield,* 121 Ky. 560, and 2 L. R. A. (N. S.) 529 (Note). WILLISTON, SALES, § 448; BENJAMIN, SALES, § 1018. The following cases hold that where the vendee is to give shipping instructions; name the place of shipment, or time of delivery; or directions or specifications as to the manufacture of the